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Before the  
Federal Communications Commission  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

94-123

In the Matter of  
Application for Review  
of 47 C.F.R. Sec. 73.658(k),  
the Prime Time Access Rule

)  
) MM File No. 870622A  
) MM File No. 900418A  
) MM File No. 920117A

To: The Commission:

ADDITIONAL COMMENTS OF OFFICE OF COMMUNICATION, UCC, ET AL.

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June 14, 1994

## SUMMARY

These brief comments supplement the detailed comments of the Coalition to Enhance Diversity, in which we also join.

There have been great changes in the video market since the adoption of the Prime Time Access Rule in 1970, and the future is certain to bring even greater diversity and fractionalization. Certainly, the emergence of Fox (with two more networks in the wings) drastically changes the picture as to PTAR. But if the PTAR restriction on use of off-network programming by ABC, CBS, and NBC affiliates in the top 50 markets during the access period today promoted the public interest in the commercial over-the-air television system, it would make sense to retain the restriction. Because it clearly does not and simply distorts the programming market, it should be eliminated.

PTAR has not led to increased local programming by such affiliates during the access period. The argument that it is the financial base of public service efforts by independent stations ignores the essential purpose of the rule, and, in any event, is wholly unsupported by any showing.

The rule is no longer needed to promote first-run programming, as shown by data establishing the strength of such programming. The rule is thus an unnecessary regulation that threatens the viability of off-network syndication, and distorts the competitive TV programming market in favor of the three very dominant distributors, King World, Paramount, and Fox. It also arbitrarily favors Fox and Fox affiliates.

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ADDITIONAL COMMENTS OF OFFICE OF COMMUNICATION, UCC, ET AL.

The commentators herein, Office of Communication of the United Church of Christ, Black Citizens for a Fair Media, Dr. Everett Parker, Adjunct Professor, Fordham University, Peggy Charren, Visiting Scholar of the Harvard University Graduate School of Education and founder of Action for Children's Television, and Henry Geller, Communications Fellow, The Markle Foundation,<sup>1</sup> are disinterested organizations or persons. We believe that they are well known to the Commission in light of numerous filings on various public interest issues. Indeed, Dr. Parker and Henry Geller have previously urged the repeal of the Prime Time Access Rule (PTAR).<sup>2</sup>

We have labelled these brief comments as additional because we join in the more detailed comments of the Coalition to Enhance

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<sup>1</sup> The views expressed by the above two individuals are their own, and not those of any organization with which they are affiliated.

<sup>2</sup> The policy arguments advanced would indicate the desirability of repealing the rule. However, because the practical issue before the Commission is the off-network programming restriction of PTAR, we have focussed on that matter.

Diversity (herein Coalition), also filed this day, urging removal of the off-network restriction on the ABC, CBS, and NBC affiliates in the top 50 markets. These additional comments underscore some points which we believe are crucial to the public interest analysis.

As the Coalition pleading makes clear, the essential purpose of PTAR is to spur first-run syndicated programming, with the additional "hope" that this would lead to programming diversity. It was also hoped that there would be increased local programming during the access period.

There has been a seachange as to programming diversity, but not because of PTAR. The extraordinary rise of cable television, with over a hundred networks, has been the main factor. That rise has contributed to the growth of independent television stations (through cable carriage of independent UHF stations). The VCR and other delivery modes like wireless cable and the satellite have added significantly to the diversity picture. See Coalition Comments. And as the Commission well knows, the future promises even greater diversity and fractionalization in light of the entry of DBS and video dial tone.

While this explosive growth in video outlets clearly should be taken into account, it is not, we stress, conclusive as to the policy issue. Over-the-air television broadcasting remains the most watched medium, and thus one of great importance. Indeed, for almost 40% of the television households (i.e., those not on cable), it represents the universe of television. Thus, if the

off-network programming restriction were shown to still serve the public interest in this vital sphere, it should be retained. We strongly believe that upon analysis, it becomes clear that the restriction is unnecessary and thus has no benefits; it does have serious detriments, and therefore should be eliminated.

One benefit, in which we would be particularly interested, would be the presentation of local programming by the ABC, CBS, and NBC affiliates during the access period. However, the Commission's hope that such programming might materialize was misplaced. There has been little such fare, so there is no benefit on this score. See Coalition Comments.

It is argued, however, that the restriction sustains the public service efforts of independent stations. See Coalition Comments. First, the short answer is that PTAR was never intended as a means to subsidize or protect independent station operation. If it were, the off-network restriction would clearly have been applied to the markets below the top 50, since independents there face the greatest hurdles.

Second, we strongly protest any acceptance by the Commission of such easily made, blanket assertions. We urge that the independent stations should make a clear and detailed showing of substantial public service supported by revenues obtained because of the existence of the PTAR restriction. The Coalition Comments raise questions about any tie-in to the PTAR restriction. We raise questions here about any substantial public service showing by these stations. We point out that the stations have never

submitted any such data to the agency in their comments. They file a postcard at renewal, with no programming information before the agency except for children's television programming, and in that area, station performance has been so suspect that the Commission is now engaged in an overall inquiry as to what remedial steps should be taken.<sup>3</sup> In these circumstances, the agency has a duty to insist on a detailed showing of substantial public service, not a glib claim.

That brings us to the essential and main purpose of PTAR -- to promote first run syndicated programming. We have little to add here to the Coalition Comments, that first-run programming is now firmly established as the most popular and lucrative choice for access programming. Such programming has been given a 25-year "break," and in light of the data showing its great strength, that is certainly sufficient.

While the benefits are, we believe, non-existent, there are serious detriments. The Coalition Comments have pointed out how, with the rise of the Fox network (and with two other networks about to enter), the restriction now has a much greater adverse impact on the viability of off-network syndication. It has fostered the dominance by three distributors, King World, Paramount, and Fox (93% of all syndicated programming in affiliate access periods in the top 50 markets). See III, B, 1.

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<sup>3</sup> See Notice of Inquiry re Policies and Rules Concerning Children's Television Programming: Revision of Programming Policy for Television Broadcast Stations, FCC Docket No. MM-93-48.

It leads to the arbitrary and absurd result that Fox may distribute its network programs to all stations in the top 50 markets, and Fox affiliates in these markets may purchase off-network fare. The Commission should visualize trying to justify these cockamamie distortions of the market in a PTAR appeal similar to the fin-syn appeal.

#### CONCLUSION

We therefore believe that it is time -- indeed long past time -- for the Commission to end this unwarranted distortion of the competitive TV programming market.

Respectfully submitted,



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June 14, 1994

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June, 1994, I caused copies of the foregoing "Comments of the Coalition to Enhance Diversity" to be mailed via first-class postage prepaid mail to the following:

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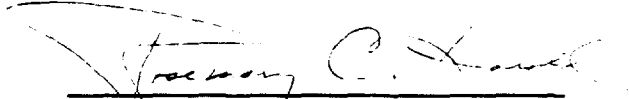
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